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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BERNICE BARKSDALE,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 02-4397
)	
KHL MARKET SQUARE, L.P.,)	
UNITED STATES POSTAL SERVICE,)	
Defendants.)	

ANSWER TO JOINDER COMPLAINT, AFFIRMATIVE DEFENSES
AND NEW MATTER - CROSS CLAIM

The United States of America, on behalf of the United States Postal Service, hereinafter referred to as "Federal Defendant", by and through its counsel, Patrick L. Meehan, United States Attorney for the Eastern District of Pennsylvania, and Virginia R. Powel, Assistant United States Attorney for said District, answers Plaintiffs' Complaint in like numbered paragraphs as follows:

1. Admit.
2. Admit.
3. Paragraph three of the Complaint sets forth procedural and/or jurisdictional allegations as well as conclusions of law to which no response is required. To the extent this paragraph is deemed to contain allegations of material fact, they are denied.
4. Denied. It is specifically denied that the Federal Defendant is the lessor of the subject property, or

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that its duties under the written lease included the maintenance of the subject area. By way of further answer, the Federal Defendant is the lessee of the subject property under a lease with Defendant KHL Market Square Ltd. The Federal Defendant avers that pursuant to the lease agreement, KHL Market Square, Ltd. is responsible for maintenance of the subject area.

5. Denied. The Federal Defendant is without sufficient information to form a belief as to the truth of the averment that KHL Market Square has pled denial of responsibility, as KHL Market Square has not filed an Answer to the Complaint. The balance of averments of Paragraph 5 consist of conclusions of law to which no response is required. Federal Defendant specifically denies that it is jointly or severally liable, by way of contribution and indemnification, for any damages assessed against KHL Market Square, Ltd.

6. Defendant incorporates its responses to Paragraphs 1 - 5 as its response to Paragraph 6.

7. Denied. To the extent that Paragraph 7 consists of conclusions of law, no response is required. To the extent that Paragraph 7 consists of allegations of fact, it is denied. The Federal Defendant specifically denies that

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any damages were caused by the negligence and carelessness of the United States Postal Service, or that it breached any duty imposed under its lease with KHL Market Square, Ltd.

8. Denied. Paragraph 8 consists of conclusions of law to which no response is required. The Federal Defendant specifically denies it is jointly or severally liable, by way of contribution or indemnification to KHL Market Square, Ltd.

The text immediately following the word "WHEREFORE" sets forth Plaintiffs' prayer for relief to which no response is required. To the extent this text is deemed to contain allegations of material fact, they are denied.

AND FURTHER answering, Defendant avers:

JURY DEMAND

Pursuant to 28 U.S.C. § 2402, Plaintiffs are not entitled to a jury trial against the Federal Defendant.

FIRST AFFIRMATIVE DEFENSE

Federal Defendant did not have a legal duty to maintain the premises.

SECOND AFFIRMATIVE DEFENSE

Federal Defendant did not fail to discharge any duty it owed to Plaintiff.

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THIRD AFFIRMATIVE DEFENSE

Any damages sustained by Plaintiff were solely and proximately caused by the carelessness, recklessness, and negligence of the Plaintiff.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by her own comparative negligence.

FIFTH AFFIRMATIVE DEFENSE

Defendant denies that it or any of its agents or employees engaged in any conduct which was the proximate cause of the injuries, damages and losses allegedly incurred by Plaintiff.

SIXTH AFFIRMATIVE DEFENSE

Under 28 U.S.C. §2412(d)(1)(A), Plaintiffs cannot recover attorney's fees from the United States of America.

SEVENTH AFFIRMATIVE DEFENSE

The United States Postal Service may not be sued eo nomine.

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EIGHTH AFFIRMATIVE DEFENSE

_____The plaintiff has no direct claim against the Federal Defendant. The Federal Defendant may be found liable for indemnity or contribution to KHL Market Square, Inc. only if the defendant KHL Market Square is held to be liable to the plaintiff.

Federal Defendant reserves the right to amend its Answer with additional defenses of which it may become aware as discovery progresses, and to raise any other matter constituting an avoidance or affirmative defense.

WHEREFORE, Federal Defendant prays that Plaintiff take nothing by way of her Complaint, that the same be dismissed, and that judgment be awarded in favor of Federal Defendant, together with costs, and for such other and further relief as the Court deems appropriate in this case.

NEW MATTER CROSS-CLAIM

1. Federal Defendant avers that pursuant to the lease agreement Defendant KHL Market Square, Ltd. owned, controlled and/or maintained the area of the parking lot where Plaintiff allegedly fell.

2. Federal Defendant avers that pursuant to the lease agreement, the area where Plaintiff allegedly fell was owned, controlled and/or maintained by Defendant KHL Market

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Square, Ltd. and that Defendant KHL Market Square, Ltd. had the exclusive responsibility to maintain and/or repair the subject property.

3. If Plaintiff was not injured solely by her own negligence, carelessness and/or recklessness, Federal Defendant avers that Plaintiff was injured either solely or in part by the negligence of Defendant KHL Market Square, Ltd.

WHEREFORE, Federal Defendant demands judgment in its favor and against KHL Market Square, Ltd. either jointly and/or severally, in any amount awarded against Defendant KHL Market Square, Ltd., or that Defendant KHL Market Square, Ltd. indemnify and hold harmless Federal Defendant or be subject to contribution to Federal Defendant for any

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amounts recovered by Plaintiff.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer to Joinder Complaint and Affirmative Defenses was served upon all interested parties by depositing same in the United States mails, postage prepaid, July 11, 2002, addressed to:

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